

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAROSLAV HYNCEK

Appeal No. 1998-2877
Application No. 08/567,680

ON BRIEF

Before HAIRSTON, RUGGIERO, and BARRY, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 12 through 16.

The disclosed invention relates to an active transistor charge detection device with a positive feedback circuit.

Claim 12 is the only independent claim on appeal, and it reads as follows:

12. An active transistor charge detection device with a positive feedback circuit comprising:

an active transistor pixel charge detection device having:

conductivity a semiconductor substrate of a first type;

 a semiconductor layer of a second conductivity type in the substrate;

for virtual phase regions of the first conductivity type formed in the semiconductor layer, the virtual phase regions forming virtual phase potential areas carriers of the second conductivity type;

conductivity a transistor source region of a first type formed in the semiconductor layer and spaced apart from the virtual phase regions;

apart a charge drain region of a second conductivity type formed in the semiconductor layer and spaced from the virtual phase regions;

 an insulating layer on the semiconductor layer;

 a transistor gate electrode formed on the insulating layer and located above a portion of the semiconductor layer that surrounds the transistor source region between virtual phase regions, the transistor gate electrode forming a transistor potential well for carriers of the second conductivity type in response to a voltage;

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insulating layer and separated from the transistor gate electrode by the virtual phase regions, the transistor gate electrode located between the transfer gate electrode and the charge drain, the transfer gate electrode forming a transfer potential area for carriers of the second conductivity type in response to a voltage;

gate resetting circuitry coupled to the transistor electrode;

amplifier circuitry coupled to the transistor source region; and

feedback circuitry coupled between an output of the amplifier circuitry and the transistor gate electrode for increasing the source sensitivity.

The reference relied on by the examiner is:

Hynecek	5,546,438	Aug. 13,
1996		

Claims 12 through 16 stand rejected under the judicially created doctrine of obviousness-type double patenting.

According to the examiner (Answer, pages 3 and 4), claims 12 through 16 on appeal stand rejected for double patenting over the claims in Hynecek.

Reference is made to the brief and the answer for the respective positions of the appellant and the examiner.

OPINION

The only argument¹ made by the appellant (Brief, pages 6 and 7) is that:

In the present application, if claims 12-16 are allowed, the patent will expire 20 years from the filing date of the original parent application, which is no later than the expiration date if the same claims had issued in the most recent parent application. Therefore, there can be no "unjustified timewise extension of the right to exclude granted by a patent".

Appellant's argument to the contrary notwithstanding, the examiner correctly concluded that a terminal disclaimer is needed because of "the public policy requirement in 37 CFR 1.321 that the patent granted on this application and the Hynecek patent '438 be commonly owned" (Answer, page 4). As stated by the court in In re Van Ornum, 686 F.2d 937, 948, 214 USPQ 761, 770 (CCPA 1982), "we consider it desirable to tie both the termination and the ownership of the two patents together, as is required by § 1.321 . . . , and, seeing no substantial obstacle to doing so, hold it to be a valid regulation." Appellant's reliance on an expiration date based

¹Appellant did not present any arguments concerning patentable distinction of the application claims over those in Hynecek.

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upon the filing date of this application, and the filing date of earlier applications, to overcome the rejection under the judicially created doctrine of obviousness-type double patenting is misplaced in view of the clear requirement of 37 CFR § 1.321(c)(3) for common ownership of any patent granted on this application and earlier patents. In summary, a terminal disclaimer under 37 CFR § 1.321² is required in this application to overcome the judicially created double patenting rejection.

²See MPEP § 804.02(IV).

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DECISION

The decision of the examiner rejecting claims 12 through 16 under the judicially created doctrine of obviousness-type double patenting is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

KENNETH W. HAIRSTON
Administrative Patent Judge

JOSEPH F. RUGGIERO
Administrative Patent Judge

LANCE LEONARD BARRY
Administrative Patent Judge

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